

IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

FOREST COLLECTION, INC.	§	
	§	
Plaintiff,	§	
	§	CIVIL ACTION NO: 4:16-cc-
VS.	§	
	§	
FEDERATED MUTUAL INSURANCE	§	
COMPANY	§	

**DEFENDANT FEDERATED MUTUAL INSURANCE COMPANY'S
NOTICE OF REMOVAL**

TO THE HONORABLE JUDGE OF SAID COURT:

Defendant, Federated Mutual Insurance Company ("Federated") files its Notice of Removal pursuant to 28 U.S.C. §1446(a).

Introduction

1. On or about February 18, 2016 Plaintiff Forest Collection, Inc. ("Forest") filed a lawsuit against Federated in Cause No. 2016-10488, *Forest Collection, Inc. v. Federated Mutual Insurance Company*, in the 215th Judicial District Court of Harris County, Texas.
2. Federated was served with process for the state court action on March 1, 2016.
3. Federated filed an answer in the state court action on March 25, 2016.
4. Federated has timely filed this Notice of Removal within 30 days pursuant to 28 U.S.C. §1446(b).
5. There are no other defendants to consent to removal.

Bases for Removal

6. This Court has original jurisdiction over this action under 28 U.S.C. §1332(a) because there is complete diversity of the parties and the amount in controversy exceeds \$75,000.00.

A. Complete Diversity Exists.

7. This controversy is entirely between citizens of different states as required for diversity jurisdiction by 28 U.S.C. §1332.

8. Forest is alleged to be a corporation formed under the laws of the State of Texas.

9. Federated is a citizen of, incorporated in, and with its principal place of business in the State of Minnesota.

B. The Amount in Controversy Exceeds \$75,000.00.

10. Forest failed to make a clear statement as to the range of the amount in controversy as required by Texas Rule of Civil Procedure 47(c). When a plaintiff fails to demand a specific sum in its original petition, the notice of removal may assert the amount in controversy, and that amount must be supported by a preponderance of the evidence.¹

11. Forest claims that its total property damage amounts to \$92,169.16.² Forest disputes whether a partial payment of \$27,774.18 made by Federated was accurate. Forest further disputes that it accepted \$27,774.18 amount as a partial payment.³ Forest also asserts that it is entitled to treble damages under Texas Insurance Code §541.152(b) and attorney's fees under various sections of the Texas Insurance Code. The treble damages alone make the amount in

¹ 28 U.S.C. §1446(c)(2).

² See Forest's Original Petition attached as Exhibit C hereto, Page 3. Federated disputes that it owes additional amounts but not that the amount in controversy exceeds \$75,000.00.

³ *Id.* at Page 8.

controversy exceed \$75,000 even if the disputed partial payment is deducted from the total damages: $\$92,169.16 - \$27,774.18 = \$64,394.98$; $\$64,394.98 \times 3 = \$193,184.94$.⁴

C. Venue is Proper.

12. Further, this action is properly removed to this Court, as the state court action is pending within this district and division.⁵

13. A copy of this Notice of Removal will be filed with the clerk of the 215th Judicial District Court of Harris County, Texas.

Index of Attached Documents

14. Pursuant to 28 U.S.C. §1446(a) and Local Rule 81, this Notice of Removal is accompanied by the following documents:

Exhibit A: An index of documents being filed;

Exhibit B: State court docket sheet;

Exhibit C: Forest's Original Petition in state court;

Exhibit D: Certified Mail Receipt;

Exhibit E: Domestic Return Receipt;

Exhibit F: Federated's Original Answer in state court; and

Exhibit G: A list of all counsel of record, including addresses, telephone numbers, and parties represented.

15. Accordingly, all requirements are met for removal under 28 U.S.C. §§1332 and 1441(b).

⁴ *St. Paul Reins. Co., Ltd. v. Greenberg*, 134 F.3d 1250, 1253 (5th Cir. 1998); *Andrade v. Standard Guar. Ins. Co.*, 2010 U.S. Dist. LEXIS 59600, *6-*8 (S.D. Tex. 2010); *Villarreal v. State Farm Lloyds*, 2015 U.S. Dist. LEXIS 136559, *5-*6 (S.D. Tex. 2015).

⁵ 28 U.S.C. §1441.

Jury Demand

16. Federated demands a jury trial and tenders the appropriate fee herewith.

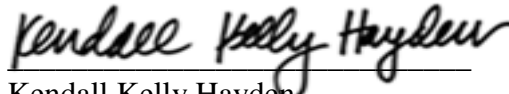
Conclusion

17. Removal of this action is proper under 28 U.S.C. §§1331 and 1441. This is a civil action brought in state court and the federal district courts have jurisdiction under 28 U.S.C. §1332(a) because there is complete diversity and the amount in controversy exceeds \$75,000.00.

18. As a result, Federated removes this action from the 215th Judicial District Court of Harris County, Texas to the United States District Court for the Southern District of Texas, Houston Division.

Respectfully submitted,

COZEN O'CONNOR



Kendall Kelly Hayden
Texas Bar No. 24046197
khayden@cozen.com
1717 Main Street, Suite 3400
Dallas, Texas 75201-7335
Telephone: (214) 462-3000
Facsimile: (214) 462-3299
and

Gregory S. Hudson
Texas Bar No. 00790929
ghudson@cozen.com
Karl A. Schulz
Texas Bar No. 24057339
kschulz@cozen.com
1221 McKinney Street, Suite 2900
Houston, Texas 77010
Telephone: (832) 214-3900
Facsimile: (713) 512-5236

**ATTORNEYS FOR DEFENDANT
FEDERATED INSURANCE COMPANY**

CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of the foregoing has been served on the following counsel of record pursuant to the Texas Rules of Civil Procedure on the 29th day of March, 2016.

Mr. Steve E. Couch
Kelly, Sutter & Kendrick, P.C.
3050 Post Oak Blvd., Suite 200
Houston, Texas 77056-6570
Facsimile: (713) 595-6001
scouch@ksklawyers.com
Attorneys for Plaintiff Forest Collection, Inc.

A handwritten signature in black ink, reading "Kendall Kelly Hayden", is written over a horizontal line.

Kendall Kelly Hayden